

**STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW
ETHICS ADJUDICATORY BOARD**

BOARD OF ETHICS

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* **DOCKET NO. 2012-10863-ETHICS-A**

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IN THE MATTER OF

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**THE CARTESIAN COMPANY, INC.
AND GREG GACHASSIN**

* **AGENCY TRACKING NO. 2011-835**

**ORDER GRANTING IN PART AND DENYING IN PART THE MOTION IN LIMINE
FILED BY THE BOARD OF ETHICS**

The Louisiana Board of Ethics filed a *Motion in Limine* seeking to exclude certain witnesses and evidence from the hearing on the merits scheduled for April 18-20, 2016. The motion is granted in part and denied in part.

APPEARANCES

A motion hearing was conducted March 29, 2016, in Baton Rouge before Ethics Adjudicatory Board Panel A. Gray Sexton appeared as counsel for The Cartesian Company, Inc. and Greg Gachassin. Suzanne Quinlan Mooney and Tracy Barker appeared as counsel for the Board of Ethics.

STATEMENT OF THE CASE

This matter is before the Ethics Adjudicatory Board Panel A (EAB) on a *Motion in Limine* filed by the Louisiana Board of Ethics (BOE). The BOE filed a memorandum in support of its motion. The Cartesian Company, Inc. and Greg Gachassin (Respondents) filed a memorandum in opposition to the BOE's motion.

The BOE issued charges against Respondents alleging that they violated the Code of

Governmental Ethics (Code of Ethics) by participating in prohibited transactions.

The BOE's *Motion in Limine* seeks to exclude from evidence at the hearing (a) Respondents' Exhibit R,¹ as well as any reference, testimony, or argument relating to the Expert Report prepared by Charles C. Theriot and Edward J. Comeaux, III; (b) Respondents' Exhibit S,² as well as any reference, testimony, or argument relating to the analysis prepared by Todd Little; (c) Respondents' Exhibit T,³ as well as any reference, testimony, or argument relating to the unsigned Affidavit of Alice G. Diez; (d) the testimony of Kenneth Boudreaux; (e) the testimony of Charles C. Theriot; and (f) the testimony of Todd Little. The BOE claims that all of the evidence it seeks to exclude is irrelevant and immaterial. The BOE also claims (a) that Exhibit R is speculative, (b) that Exhibit T is speculative and hearsay, (c) that the testimony of Charles Theriot would confuse the issues and waste time, (d) that the testimony of Todd Little would waste time, (e) and that the testimony of Kenneth Boudreaux would waste time and cannot be provided by a non-expert.

In the alternative, the BOE seeks an order compelling Respondents to provide the BOE with written reports signed by Mr. Theriot and Mr. Little; all documents reviewed and/or relied on by Mr. Theriot and Mr. Little in support of their respective opinions; the qualifications of each witness, including a list of all publications authored by each witness within the preceding 10 years; the compensation to be paid for the study and testimony; and a listing of any other cases in which each witness has testified as an expert at trial or by deposition within the preceding four years.

Respondents claim that granting the BOE's *Motion in Limine* would be inappropriate because (a) the BOE did not timely challenge the qualifications of Respondents' expert

¹ A report prepared by Charles C. Theriot and Edward J. Comeaux, III.

² A report prepared by Todd Little.

³ The unsigned affidavit of Alice G. Diez.

witnesses, (b) the testimonies of both Mr. Theriot and Mr. Little are relevant and material in assisting the EAB understand the low-cost housing plan and whether Respondents obtained any economic advantage from the alleged violations, and (c) Mr. Boudreaux will testify about the great benefits that both the Cypress Trails and Villa Gardens development projects have had on the communities. Respondents' counsel, Mr. Sexton, conceded that Exhibit T, the affidavit of Alice G. Diez, is not in proper form and agreed to withdraw it.

Witnesses and Exhibits the BOE Seeks to Exclude

1. Charles C. Theriot – Respondents plan to qualify him as a forensic accounting expert to testify about the net profits realized by Respondents from 2009 through 2012 on the Cypress Trails and Villa Gardens development projects.
2. Todd Little – Respondents plan to qualify him as an expert regarding affordable low-income housing tax credits and developments. He will testify about the total fees paid on the Cypress Trails and Villa Gardens development projects, the reasonableness and efficiency of those two development projects compared to similar development projects, and the awards that both development projects received.
3. Kenneth P. Boudreaux – As a councilmember of the Lafayette Consolidated Government, he will be called to testify about the great benefits that both the Cypress Trails and Villa Gardens development projects have had on the communities where the projects were developed. Mr. Boudreaux will also testify about the transparency involved in both development projects.
4. Exhibit R: Expert Report prepared by Charles C. Theriot and Edward J. Comeaux, III.
5. Exhibit S: An analysis prepared by Todd Little.
6. Exhibit T: Affidavit of Alice G. Diez.

The EAB heard oral arguments and took the matter under advisement.

This adjudication is conducted in accordance with the Code of Governmental Ethics, La. R.S. 42:1101, *et seq.*; the Administrative Procedure Act, La. R.S. 49:950, *et seq.*, and the Division of Administrative Law Act, La. R.S. 49:991, *et seq.*

CONCLUSIONS OF LAW

The BOE's *Motion in Limine* is granted in part and denied in part. Respondents' Exhibit T and the testimony of Kenneth Boudreaux are excluded. Respondents may call Charles C. Theriot and Todd Little as witnesses. Respondents may introduce Exhibits R and S at the hearing.

The BOE argued that the testimonies of Charles C. Theriot, Todd Little, and Kenneth Boudreaux are irrelevant and will have no probative value. The BOE also argued that any expert or specialized knowledge of Charles C. Theriot and Todd Little will not assist the EAB in understanding a fact in issue. The Respondents argued that they have a right to introduce expert testimony and evidence showing that they did not achieve an "economic advantage" that would warrant imposition of the penalties contained in La. R.S. 42:1155.

The primary objective of the Code of Ethics is to prevent public officers and employees from becoming involved in conflicts of interest.⁴ If the EAB determines that Respondents violated the Code of Ethics to their economic advantage, it has the authority to order the payment of penalties.⁵ Penalties may include an amount equal to such economic advantage, plus an additional amount not to exceed one-half of the amount of the economic advantage.⁶

Testimonies of Charles C. Theriot and Todd Little and Exhibits R and S

The BOE's arguments are unpersuasive. The Code of Ethics requires the EAB to conduct public hearings on ethics charges in accordance with the Administrative Procedure Act

⁴ *In re McJunkins*, 99-0326, p.6 (La. App. 1 Cir. 3/31/00), 794 So. 2d 845, 848.

⁵ La. R.S. 42:1155.

⁶ La. R.S. 42:1155(A).

(APA).⁷ The APA permits admission of all evidence that is material, relevant, and not unduly repetitious.⁸ In an administrative proceeding, any evidence which possesses “probative value commonly accepted by reasonably prudent men in the conduct of their affairs,” subject to objections of irrelevancy, immateriality, incompetency, or repetitiousness, may be admitted.⁹

The testimonies of Charles C. Theriot and Todd Little and Respondents’ Exhibits R and S are probative of the issue of economic advantage, as they will address net profits of the development projects, the fees paid on the development projects, and the reasonableness and efficiency of the development projects compared to similar development projects. Because the EAB has the authority to order the payment of penalties based on the amount of any economic advantage obtained by Respondents, the testimonies of Charles C. Theriot and Todd Little and Respondents’ Exhibits R and S are relevant and material to the issue of penalty. They are not speculative, confusing, or a waste of time; they are tools to assist the EAB in understanding the meaning of “economic advantage,” a term nowhere defined or interpreted in the Code of Ethics, jurisprudence, or opinions of the BOE or EAB. For these reasons, the BOE’s *Motion in Limine* to exclude the testimonies of Charles C. Theriot and Todd Little, and Exhibits R¹⁰ and S is denied.

Respondents acknowledge that they only provided the qualifications of Todd Little’s firm and did not provide his personal qualifications.¹¹ Respondents must provide the BOE with all

⁷ La. R.S. 49:950, *et seq.*

⁸ See La. R.S. 49:956(1).

⁹ *Fisher v. Louisiana State Board of Medical Examiners*, 352 So.2d 729, 731 (La. App. 4th Cir.1977), writ denied, 353 So. 2d 1338 (La.1978); see La. R.S. 49:956 and *Germany v. State, Department of Health and Human Resources*, 493 So.2d 800 (La. App. 2d Cir. 1986), writ denied, 496 So.2d 352 (La. 1986).

¹⁰ Respondents’ Exhibit R contains (a) a written report signed by Charles C. Theriot and Edward J. Comeaux, III, (b) all documents they reviewed and/or relied on in support of their opinions, (c) Charles C. Theriot’s qualifications, including a list of all publications he authored within the preceding ten years, (d) the compensation to be paid for the study and testimony, and (e) a listing of all other cases in which he has testified as an expert at trial or by deposition since 2005.

¹¹ See Respondents’ Exhibit S; see also page 4 of Respondents’ memorandum in opposition to the *Motion in Limine*.

documents Todd Little reviewed and/or relied on in support of his opinions; his qualifications, including a list of all publications he authored within the preceding 10 years; the compensation to be paid for the study and testimony; and a listing of all other cases in which he has testified as an expert at trial or by deposition within the preceding four years.

Testimony of Kenneth Boudreaux

Respondents intend to call Kenneth Boudreaux as a witness to testify about the great benefits of the development projects. His testimony is irrelevant and immaterial. It does not possess any probative value related to the alleged Code of Ethics violations by Respondents. Any benefit incurred by the community is not an issue or an element necessary to determine whether Respondents violated the Code of Ethics or in determining the amount of penalty to impose for such violation. For these reasons, the BOE's *Motion in Limine* to exclude the testimony of Kenneth Boudreaux is granted.

Exhibit T

Respondents intend to introduce Exhibit T, which is an undated and unsigned affidavit of Alice G. Diez. Respondents' counsel acknowledged that Exhibit T is not competent evidence and is not in proper form.¹² The BOE's *Motion in Limine* to exclude the introduction of Exhibit T is granted.

¹² *Gorman v. Miller*, 2012-0412, p.7 (2012-0412 (La.App. 1 Cir. 11/13/13), 136 So.3d 834, 841 (a document that is not signed and notarized cannot be considered as an affidavit) (citing *Anderson v. Allstate Ins. Co.*, 93-1102 (La.App. 1 Cir. 4/8/94), 642 So. 2d 208, writ denied, 94-2400 (La.11/29/94), 646 So.2d 404).

ORDER

As to the hearing on the merits scheduled for April 18-20, 2016, and as to other dates to which it is continued,

IT IS ORDERED that the Louisiana Board of Ethics' *Motion in Limine* seeking to exclude from the hearing the oral testimony of Charles C. Theriot is **DENIED**.

IT IS ORDERED that the Louisiana Board of Ethics' *Motion in Limine* seeking to exclude from the hearing the oral testimony of Todd Little is **DENIED**.

IT IS ORDERED that the Louisiana Board of Ethics' *Motion in Limine* seeking to exclude from the hearing The Cartesian Company, Inc. and Greg Gachassin's Exhibit R is **DENIED**.

IT IS ORDERED that the Louisiana Board of Ethics' *Motion in Limine* seeking to exclude from the hearing The Cartesian Company, Inc. and Greg Gachassin's Exhibit S is **DENIED**.

IT IS ORDERED that the Louisiana Board of Ethics' *Motion in Limine* seeking to exclude from the hearing the oral testimony of Kenneth Boudreaux is **GRANTED**.

IT IS ORDERED that the Louisiana Board of Ethics' *Motion in Limine* seeking to exclude from the hearing The Cartesian Company, Inc. and Greg Gachassin's Exhibit T is **GRANTED**.

IT IS ORDERED that The Cartesian Company, Inc. and Greg Gachassin provide the following documents to the Louisiana Board of Ethics by **5:00 p.m. on April 12, 2016**:

- (a) All documents Todd Little reviewed and/or relied on in support of his expert opinion;
- (b) Todd Little's qualifications, including a list of all publications he authored within the preceding ten years;

- (c) The compensation to be paid for Todd Little's study and testimony; and
- (d) A listing of all other cases in which Todd Little has testified as an expert at trial or by deposition within the preceding four years.

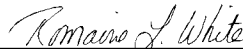
Rendered and signed April 8, 2016, in Baton Rouge, Louisiana.



Adaora Chukudebelu
Presiding Administrative Law Judge



A. Brock Avery
Administrative Law Judge



Romaine White
Administrative Law Judge

REVIEW RIGHTS

Please be advised that you may be entitled to a rehearing or reconsideration of this decision within 10 days of the date of this transmission, if you can establish that one of the legal grounds listed in La. R.S. 49:959 is applicable to your case. Requests for a rehearing or reconsideration must be received by the Ethics Adjudicatory Board within 10 days of the date of this transmission. You may fax your request to (225)219-9983 or email it to EABprocessing@adminlaw.state.la.us.

You may also be entitled to judicial review of this decision within certain time limits. To determine your rights to review, you should act promptly and seek legal advice.

NOTICE OF TRANSMISSION OF DECISION OR ORDER

I certify that on Friday, April 08, 2016, I have sent a copy of
this decision/order to all parties of this matter.

Clerk of Court

Division of Administrative Law